

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

MAC Transportation, Inc.
1730 East Francis Street
Ontario, California 91760

Respondent.

Docket HWCA 2008-1725

CONSENT ORDER

Health and Safety Code
Section 25189.2, 25214.9

1. INTRODUCTION

1.1. Parties. The California Department of Toxic Substances Control (Department) and MAC Transportation, Inc. (Respondent) enter into this Consent Order (Order) and agree as follows:

1.2. Site. Respondent generates, handles, treats, stores, and/or disposes of hazardous waste at the following site 1730 East Francis Street, Ontario, California 91760 (Site).

1.3. Authorization Status. Respondent is a registered hazardous waste transporter in the State of California.

1.4. Jurisdiction. Health and Safety Code, section 25187, authorizes the Department to order action necessary to correct violations and to assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto. Health and Safety Code, section 25214.9, subdivision (a), authorizes the

MAC Transportation, Inc.

Docket HWCA 2008-1725
CONSENT ORDER

Department to enforce the requirements of Chapter 8.5 (commencing with Section 42460) of Part 3 of Division 30 of the Public Resources Code.

1.5. Full Settlement. By their respective signatures below, the Parties, and each of them, agree that this Order, and all of the terms contained herein, are fair, reasonable, and in the public interest. This Order shall constitute full settlement of the violations alleged below. By agreeing to this Order, the Department does not waive any right to take further enforcement actions within its jurisdiction and involving either the Respondent(s) or the Site, except to the extent provided in this Order.

1.6. Hearing. Respondent waives any and all rights to a hearing in this matter.

1.7. Admissions. Respondent admits the violation described below.

2. VIOLATIONS ALLEGED

2. The Department alleges the following violations:

2.1. Respondent violated Health & Safety Code, section 25189.2, subdivision (a), in that, in July, August, September and October, 2006, Respondent submitted false documentation in support of claims for monetary reimbursement pursuant to the Electronic Waste Recycling Act of 2003 as set forth at Chapter 8.5 (commencing with Section 42460) of Part 3 of Division 30 of the Public Resources Code and California Code of Regulations, title 14, sections 18660.5, et seq. Collection logs provided by Respondent included false entries that appeared two, three or four times within the same month's claim.

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MAC Transportation, Inc.

Docket HWCA 2008-1725
CONSENT ORDER

3. SCHEDULE FOR COMPLIANCE

3. Respondent shall comply with the following:

3.1. Respondent shall not submit any claim for compensation under Health and Safety Code, section 25189.2, that is not accurate and in strict compliance with the requirements thereof.

3.1.2. Respondent shall make all payments at the time(s) and in accord with any other conditions set forth in Section 5 (Penalty) below.

3.2. Submittals. All submittals from Respondent pursuant to this Consent Order shall be sent to:

Linda Chamberlain
Office of Criminal Investigations
Department of Toxic Substances Control
1001 "I" Street
P.O. Box 806
Sacramento, California 95812-0806

CeCe Fan
Criminal Investigator
Office of Criminal Investigations
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

3.3. Communications. All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by the appropriate Branch Chief, or his/her designee. No informal advice, guidance, suggestions, or comments by the shall relieve Respondent of its obligation to obtain required formal approvals.

3.4. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with this Order or fails to protect public health or safety or the environment, the Department may:

- a. Modify the document and approve the document as modified, or
- b. Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

3.5. Compliance with Applicable Laws. Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.6. Endangerment during Implementation. In the event that the Department determines that any circumstance or activity (whether or not pursued in compliance with this Order) is creating an imminent or substantial endangerment to the health or welfare of people on the Site, in the surrounding area, or to the environment, the Department may order Respondent to stop further implementation of this Order for such period of time as is needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended by the term of such Stop Work Order.

3.7. Liability. Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of Respondent's operations, except as provided in this Order. Notwithstanding compliance with the terms of

this Order, Respondent may be required to take such further actions as are necessary to protect public health or welfare, or the environment.

3.8. Site Access. Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any other agency having jurisdiction. The Department and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law.

3.9. Sampling, Data, and Document Availability.

3.9.1. Respondent shall permit the Department and/or its authorized representatives to inspect and copy all sampling, testing, monitoring, and/or other data (including, without limitation, the results of any such sampling, testing and monitoring) generated by Respondent, or on Respondent's behalf, in any way pertaining to work undertaken pursuant to this Order.

3.9.2. Respondent shall allow the Department and/or its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be

preserved by Respondent for a minimum of six years after the conclusion of all activities under this Order.

3.9.3. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either:

- (a) comply with that request,
- (b) deliver the documents to the Department, or
- (c) notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order and permit the Department to copy the documents prior to destruction.

3.10. Government Liabilities. Neither the State of California nor the Department shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent, or related parties, in carrying out activities pursuant to this Order. Neither the State of California nor the Department shall be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to the Order.

3.11. Incorporation of Plans and Reports. All plans, schedules, and reports that were submitted by Respondent pursuant to the violations set forth above, and/or this schedule for compliance, and were approved by the Department are hereby incorporated into this Order.

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3.12. Extension Requests. If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

3.13. Extension Approvals. If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

4. OTHER PROVISIONS

4.1. Penalties for Noncompliance. Failure to comply with the terms of this Order may subject Respondent to costs, penalties and/or damages, as provided by Health and Safety Code, section 25188, and other applicable provisions of law.

4.2. Parties Bound. This Order shall apply to and be binding upon Respondent and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Order.

4.3. Privileges. Nothing in this Agreement shall be construed to require any party to waive any privilege. However, the assertion of any privilege shall not relieve any party of its obligations under this Order.

4.4. Time Periods. "Days" for the purpose of this Order means calendar days.

4.5. Captions and Headings. Captions and headings used herein are for convenience only and shall not be used in construing this Consent Order.

4.6. Severability. If any provision of this Consent Order is found by a court of competent jurisdiction to be illegal, invalid, unlawful, void or unenforceable, then such provision shall be enforced to the extent that it is not illegal, invalid, unlawful, void, or unenforceable, and the remainder of this Consent Order shall continue in full force and effect.

4.7. Entire Agreement. This Consent Order contains the entire and only understanding between the Parties regarding the subject matter contained herein and shall supercede any and all prior and/or contemporaneous oral or written negotiations, agreements, representations and understandings and may not be amended, supplemented, or modified, except as provided in this Order. The Parties understand and agree that in entering into this Consent Order, the Parties are not relying on any representations not expressly contained in this Consent Order.

4.8. Counterparts. This Consent Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

4.9. Non-Waiver. The failure by one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Contract constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

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5. PENALTY

5.1. Respondent shall pay the Department the total sum of \$30,000, which includes \$15,000 as reimbursement of the Department's costs incurred in connection with this matter.

5.2. Respondent's first payment, in the amount of \$6,000.00, shall be on DATE. The remaining balance of \$24,000.00 shall be payable in six quarterly installments of \$3,400.00 and one final installment of \$3,600.00. Payments shall be due on the dates set forth below. In the event that any payment is not received at the address set forth below on or before the tenth day of the month in which it is due, the entire remaining balance shall become due and payable immediately.

June 1, 2008	\$6,000.00
September 1, 2008	\$3,400.00
December 1, 2008	\$3,400.00
March 1, 2009	\$3,400.00
June 1, 2009	\$3,400.00
September 1, 2009	\$3,400.00
December 1, 2009	\$3,400.00
March 1, 2009	\$3,600.00

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5.3. Respondent's check(s) shall be made payable to Department of Toxic Substances Control, shall identify the Respondent and Docket Number, as shown in the caption of this case, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check(s) shall be sent to:

Linda Chamberlain
Office of Criminal Investigations
Department of Toxic Substances Control
1001 "I" Street
P.O. Box 806
Sacramento, California 95812-0806

CeCe Fan
Criminal Investigator
Office of Criminal Investigations
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

James J. Grace
Senior Staff Counsel
Office of Legal Counsel
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

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5.4. If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.


6. EFFECTIVE DATE

6. The effective date of this Order is the date it is signed by the Department.

Dated: 5/29/08


Respondent

Dated: 06/25/08


Department of Toxic Substances Control